

Developing a Collaborative Design Approach¹

I. Introduction

This chapter addresses issues that should be considered **before** the formal design phase begins. These issues should be revisited throughout the design and implementation process. These issues include:

- identifying stakeholders who should participate in the process;
- providing feedback opportunities;
- marketing needs and strategies;
- identifying and creating incentives and rewards; and
- identifying and removing disincentives and constraints.

How an agency addresses these issues will determine the approach it uses throughout the design and implementation processes. An agency's decisions on these issues will be critical in the success or failure of its ADR program design.

II. Participation

Participatory management and customer involvement are two hallmarks of the "Quality" movement in organization effectiveness. Both concepts should also be hallmarks of a dispute systems design program. Agencies are learning that an effective mediation process produces more durable agreements because it is fashioned by the disputants. This is also true for ADR programs; an ADR program design that is based on input from the appropriate stakeholders will face less resistance and have a greater probability of success than one that is thrust upon them.

The application of participatory management to a dispute system design environment involves identifying and involving all appropriate stakeholders. These stakeholders should include agency employees at all levels who will be involved in implementing, administering, managing, and evaluating the program.

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Necessary stakeholders might include:

- agency policy makers and decision makers;
- subject matter policy makers and decision makers (for example, EEO director, personnel director, and others involved in workplace dispute resolution);
- program managers;
- program administrators; and
- general counsel or subject matter legal specialists.

Customer involvement means identifying the "customers" of the proposed dispute resolution program and involving them in the design, implementation, and evaluation efforts. These could be internal customers such as:

- senior subject matter managers;
- program specialists;
- agency litigation counsel;
- union officers and representatives; and
- employee "users" (particularly in workplace dispute resolution programs).

They could also be external customers such as:

- disputants from the regulated community;
- representatives of the regulated community;
- contractors; and
- other private party disputants.

It is important that participation in the design process be as risk-free as possible. With the many varied interests involved in the process, conflicts are not only possible, but likely. Some influential people

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may perceive that their interests are being threatened by the introduction of alternatives to traditional dispute resolution systems.

Participants must feel confident that they can involve themselves actively and creatively in the design process with minimum risk.

III. Feedback

Stakeholder participation is not useful without meaningful feedback. Designers must be open to feedback and provide opportunities for participants to react to proposals throughout all phases of the design effort. The designer's openness to feedback will not only enhance the design, but also send a message that the designer is using a real participatory process. An effective feedback system will increase the likelihood of obtaining buy-in from necessary parties. It will also serve as the basis for evaluation of the design process.

An effective feedback loop should include three stages:

1. the opportunity and means for all participants to respond to proposals;
2. consideration and use of the comments; and
3. report back to participants on how the comments were used.

This feedback system should be employed throughout the design phase to identify problems and resolve them before the plan is completed and approved.

IV. Marketing

The success, or failure, of an ADR program will depend in large part on the buy-in of key stakeholders. Marketing, through training and education, should begin before the design is begun and should continue throughout the design and implementation processes. Early marketing efforts might consist of short, informational presentations or pamphlets defining ADR and explaining how the agency intends to use it. These early efforts will help obtain buy-in to the design phase and will facilitate the design process. Marketing during the development of the design will educate users as to the program's purpose and goals. (*See Part II, Chapter 1, Marketing an ADR Program*)

V. Measures of Success

Evaluation is an essential part of the design and implementation of an ADR program, and the designer should address evaluation issues early, before beginning the official design phase. The first step in developing an appropriate evaluation methodology is to determine an agency's definition, or measures, of success.

Success in an ADR dispute resolution system is likely to be different from the measure of success in litigation or other traditional dispute resolution processes. For example, success in litigation might be measured by the number of "wins" and "losses" at trial. Success in ADR might mean the amount of money saved in litigation by resolving cases before trial. Whatever the measure of success, it must be determined early in the design process so that appropriate goals and objectives can be developed, and the necessary information collected for an effective evaluation. *(See Part II, Chapter 8 for more specific information on Evaluating and ADR Program)*

VI. Incentives/Disincentives

An agency's existing incentives and disincentives for using ADR will affect the ultimate success or failure of the proposed ADR program. In order to take advantage of the incentives and develop strategies for overcoming the disincentives, designers should identify both the individual and institutional incentives and disincentives as early as possible.

Incentives need to be identified so they can be used advantageously. Existing incentives may include:

- need to comply with ADR statutes and regulations (such as EEOC Regulation 1614)
- need to save time and money on dispute resolution
- desire to improve communication and working relationships.

Existing incentives may be inadequate to encourage participation in the ADR program and also may be in conflict with the ADR program goals. For example, staff and other resources may be allocated on the basis of the number of on-going disputes or lawsuits. Attempts to encourage settlement using ADR will meet with significant resistance unless new incentives are created to reward resolving disputes.

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Disincentives also must be identified early and plans made to avoid or overcome them. Existing disincentives may include:

- lack of start-up resources
- resistance to change
- institutional culture (i.e. never settle unless liability is unavoidable)
- individual fear of losing power or status.

Involving all the stakeholders in the design process is one of the most effective ways of identifying and minimizing disincentives, especially those involving resistance to change. Educational and informational efforts are other effective strategies for overcoming individual and institutional resistance. (*See Part II, Chapter 1, Marketing an ADR Program*)

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- ✓ Identify stakeholders who should participate in the process
 - agency policy makers and decision makers
 - agency subject matter policy makers and decision makers
 - program managers
 - program administrators
 - general counsel and other appropriate legal specialists
 - union officers and representatives
 - employee "users"
 - external" customers
- ✓ Provide opportunities for feedback
 - opportunity and means for all participants to respond to proposals
 - consideration and use of the comments
 - report back to participants
- ✓ Marketing
 - training and education
 - pamphlets and other written materials
- ✓ Measures of success
 - define "success"
 - develop goals and objectives based on measure of success

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- ✓ Incentives/Disincentives
 - identify existing incentives
 - recommend appropriate new incentives
 - identify existing disincentives
 - develop strategies to avoid or overcome disincentives